IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

WP(C).No. 30878 of 2006(A)

OS.443/1999 of MUNSIFF COURT, PERUMBAVOOR

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PETITIONER:

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1. THRESIAMMA GEORGE, W/O.GEORGE,
   AGED 73 YEARS, KOIKKARA HOUSE, THAMACHARACHAL,
   KIZHAKKAMBALAM P.O., KIZHAKKAMBALAM.

2. JOSE.K.G., S/O.GEORGE, AGED 55 YEARS,
   KOIKKARA HOUSE, THAMARACHAL, KIZHAKKAMBALAM P.O.,
   KIZHAKKAMBALAM VILLAGE.

BY ADV. SRI.TONY PETTAH
SRI.THAMBI JACOB

RESPONDENTS:

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1. DEVASSY, S/O.OUSEPH, AGED ABOUT 74 YEARS
   KOTTUNGAL HOUSE, THAMARACHAL,
   KIZHAKKAMBALAM P.O., KIZHAKKAMBALAM VILLAGE.

2. JOSE, S/O.DEVASSY, AGED 50 YEARS,
   KOTTUNGAL HOUSE, THAMARACHAL, KIZHAKKAMBALAM P.O.,
   KIZHAKKAMBALAM VILLAGE.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J

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W.P.(C) NO.30878 Of 2006

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Dated this the 22nd day of November, 2006

J U D G M E N T

Petitioner-plaintiff challenges Ext.P14 order passed on the Ext.P5 application to set aside Ext.P4 Commissioner's report. The Commissioner and Surveyor were examined as Pws. 2 and 3. The court below by Ext.P14 impugned order, held that no grounds are made out to set aside the Commissioner's Report and that no direction can be issued to the Commissioner and Surveyor to measure out the property in accordance with law without certified plan. Any interference with Ext.P14 can be made only by appreciating evidence. Content of jurisdiction under article 227 desists me from doing such an exercise, having particular regard to the fact that the plaintiff, if he losses the suit ultimately, has a right under Section 96 of the C.P.C, to a comprehensive appeal on fact and law. The propriety of Ext.P14 order is also a matter that can be subjected to such appeal. Under such circumstances, I do not find any ground to interfere with Ext.P14 order. In the result, this writ petition is dismissed leaving open all contentions of the petitioner as against Ext.P14 to be urged before the appropriate forum, if and when it may become necessary.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

SJ